

**E-Mail Request for Emergency Relief**

1. Case Number: 04-cv-960 -SLR

2. Check the box that applies:

- ☐ Requesting a teleconference with the parties and the court  
☐ Requesting an in-person conference with the parties and the court  
☒ Requesting either of the above listed options at the court's determination

3. BRIEFLY describe the reason for this **emergency** request:

Plaintiffs seek resolution of a scheduling disagreement in connection with Defendant's Motion to Strike Portions of Plaintiffs' Expert Report (the "Motion"). (D.I. 136). Through its Motion, Defendant requests that the Court "strike [Plaintiffs' expert] Report's baseless references to underpayments . . . [and] any reference to reliance and lost profits damages." (D.I. 136 at pp. 1-2). Plaintiffs believe Defendant's requested relief is more properly presented as a motion in limine. This is true because: (i) Plaintiffs' expert report is not a pleading susceptible to a motion to strike under Rules 7 or 12 and (ii) the Court's Scheduling Order specifically contemplates an established procedure and deadline for filing motions in limine. (D.I. 24) (noting that no reply papers are permitted). In light of the foregoing, Plaintiffs request that the Court order the following schedule: (i) Plaintiffs' opposition to Defendant's Motion be filed on or before September 5, 2006 (in accordance with the Scheduling Order) and (ii) that no reply papers be submitted on the Motion in any event.

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\*Any text added beyond the limits of this space will be disregarded by the court.

4. Name of opposing counsel contacted about this request: Cory Talbot

5. Response of opposing counsel to this request:

Proposed alternatives to: (i) permit Defendant to withdraw the Motion without prejudice to re-file at or about the date motions in limine are due or (ii) Plaintiffs would respond to the Motion by the in limine deadline were not acceptable to Defendant.

6. Name of local counsel making this request: David Felice (#4090)

7. Today's Date: June 7, 2006

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For court use only:

☐ A teleconference will be held on  
initiated by

to be coordinated and

☐ An in-person discovery conference will be held on:

☒ Briefing should proceed. The court will address the motion in due course.

**Opposing Counsel's Response to E-Mail Request for Emergency Relief**

1. Case Number: 04-cv-960 -SLR

2. BRIEFLY state your response to the **emergency** request made by opposing counsel:

In no sense whatsoever is plaintiffs' request an "emergency." Defendant filed its motion to strike matters from an expert report on May 22. Airing and resolving the issues the motion raises are important now, given ongoing expert discovery, a settlement conference on June 22, and trial in September. Plaintiffs have simply decided, for themselves, that they should be excused from responding to the motion to strike and would prefer that the important issues be postponed. After waiting over two weeks and allowing their time to respond to expire, plaintiffs now claim an "emergency" and represent that they are merely seeking a scheduling change. They are not. They are making arguments about the motion to strike that they should have made as part of an opposition. Plaintiffs' "emergency" request to carry out a broader strategy intended to avoid resolving key issues should be denied.

\*Any text added to beyond the limits of this space will be disregarded by the court.

3. Name of local counsel submitting this response: William W. Bowser (2239)

4. Today's Date: June 7, 2006

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